

With regard to the first and third alleged variations I cannot believe that any Court of justice would hold that a bill of sale was void for not being in the correct form if the only variations were the insertion of brackets round the date (which appears to me to be the only real variation in view of the blanks in the form); and because the amount was given as "dollars twelve thousand and five hundred" instead of "twelve thousand and five hundred dollars". All cheques in this country are written with the word "dollars" before the amount. In my opinion these so-called variations are covered by the maxim *de minimis non curat lex*. There remains, therefore, the question of the insertion of the specific expression "motor cars" instead of the prescribed word "chattels".

It has been held in the past in the Straits Settlements that the expression "in the form" which appears in our Ordinance is much stricter than the expression "in accordance with the form" which occurs in the English Acts, and there is authority for the proposition that under our Ordinance the form laid down must be followed *verbatim et literatim*. In the case of *Official Assignee v. Koh Kam Neo*<sup>(1)</sup> Leach J. in the Court of Appeal said that there had been no decision as to how far trivial errors might be overlooked when the words were "in the form". That case, however, was actually decided on the ground that the variation did in fact alter the legal effect of the document and was a variation both in form and in substance. In *Aroonsallam Chetty v. Tay Heng Lee & Anor.*<sup>(2)</sup> it was held that the use of the expression "Signed, Sealed and Delivered" instead of the prescribed form "Signed and Sealed" was a fatal variation. In an earlier case *Menatchy v. Trusty*<sup>(3)</sup>, Collyer J. said:—

"Mere verbal differences as 'with interest' instead of 'and interest' I should not regard on the principle of *de minimis non curat lex*."

If these authorities are good law I should be left in doubt as to whether or not I could disregard the variation in the present bill of sale as covered by the maxim *de minimis non curat lex*. Since those cases were decided, however, the Interpretation and General Clauses Ordinance, 1948 has been passed and the question, therefore, arises whether Section 7 of that Ordinance has altered the law. That Section reads as follows:—

"7. Save as is otherwise expressly provided, whenever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them."

Prior to the passing of this Ordinance there was no similar provision in the Interpretation Ordinance of the Straits Settlements, but a very similar provision existed in the Interpretation and General Clauses Enactment, 1932 of the Federated Malay States. The

only difference between Section 33 of that Enactment and Section 7 of the Ordinance above quoted is that in the Enactment the word "is" does not appear after the words "Save as" at the beginning of the Section.

In the case of *Hussain v. Chanda Singh*<sup>(4)</sup> Cussen J. considered the provisions of Section 6(b) of the Bills of Sale Enactment, 1922 which as far as I can ascertain was the same as Section 6(b) of the Bills of Sale Ordinance and also Section 33 of the Interpretation and General Clauses Enactment, 1932.

He held that in applying Section 6 of the Bills of Sale Enactment one must read with it Section 33 of the Interpretation and General Clauses Enactment.

Mr. Pooley has argued that the words "if it is not made in the form of Schedule A" amount to an express provision that even slight deviations should invalidate. Even apart from authority I should have been inclined to think that these words were no more than words prescribing a form and that as there is no additional express provision in Section 6 of the Bills of Sale Ordinance to the effect that even slight deviations shall invalidate Section 7 of the Interpretation and General Clauses Ordinance, 1948 would prevail, so as to save a bill of sale.

As, however, there is authority on the point I think it right to follow the decision of Cussen J. and to hold that Section 6 of the Bills of Sale Ordinance must now be read subject to Section 7 of the Interpretation and General Clauses Ordinance, 1948 so that slight deviations therefrom not affecting the substance or calculated to mislead shall not invalidate a bill of sale.

The variation in the present case not only does not affect the substance of the document and cannot be calculated to mislead but on the contrary is more precise than the form itself.

I hold, therefore, that the bill of sale in this case is not invalidated by reason of the variation.

*Order accordingly.*

Solicitors: Hogan, Adams & Allan; Presgrave & Matthews.

#### G. RAMCHAND v. LAM SOON CANNERY CO. LTD.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.)  
and Whitton J.) October 4, 1954]

[Singapore — Civil Appeal No. 2 of 1954]

*Contract — Forward dealings in rubber — Whether gaming contract — Stranger to contract — Release — Novation.*

These claims arose out of forward dealings in rubber in which one Pinto made contracts with the Respondents in the name of the Appellants. The Appellants repudiated the contracts on the ground that Pinto had entered into them without authority.

The parties agreed on certain issues to be tried separately from the other issues raised in the pleadings.

The first issue which was not the subject of appeal was whether the transactions were gaming transactions and the learned trial Judge held that they were not gaming unless both sides agreed that they will only pay and receive differences. As long as one or the other genuinely intends that physical rubber shall be shipped, the agreement is a contract.

The other issues raised turned on a letter dated October 3, 1952 which the Respondents' Managing Director wrote to the Appellants in the following terms: "... we wish to inform you that Mr. Pinto has since come to an agreement with us. He undertakes to pay off the entire debt due by monthly instalments. He has since paid us an initial amount and undertakes to pay all the balance himself, as arranged. In consideration of his undertakings to pay, we now relieve you of all liabilities and will not look to you for payment." This letter raised two issues, one of which was based on the first part of para. 9 of the Defence, namely, whether the letter constitutes a full release and discharge of all liability.

**Held:** a release not by deed and without consideration could not discharge a debt.

The other issue was raised by the second part of para. 9 of the Defence, namely, whether the said letter constituted a novation whereby the Respondents accepted Pinto as a contracting party in place of the Appellants.

**Held:** the word "novation" is a technical term of the Civil Law. If it is used in its more usual meaning there must be a tripartite agreement between the original parties and the substituted party. This was not the case here. A stranger cannot acquire rights under a contract but it is inequitable for a person having been paid by a stranger part or whole of the debt to recover the debt again. On equitable principles the Respondents are not required to give credit for more than what they have actually received from Pinto.

*Cases referred to:—*

- (1) *Dunlop v. Selfridge* (1915) A.C. 847.
- (2) *Jones v. Broadhurst* 9 C.B. at p. 193.
- (3) *Cook v. Lister* 13 C.B., N.S. 538.
- (4) *Thornton & Maynard* (1875) L.R. 10 C.P. 698.
- (5) *Hirchand v. Temple* (1911) 2 K.B. 330.

#### COURT OF APPEAL.

*Kenneth A. Seth* for the appellants.

*Dr. C. H. Withers-Payne* for the respondents.

*Cur. Adv. Vult.*

**Murray-Aynsley C.J.** (with whom **Mathew C.J.** (F.M.) and **Whitton J.** agreed):—In this case the respondents made claims against the appellants which were not admitted. These claims arose out of dealings in rubber in which one Pinto made contracts with the respondents in the name of the appellants. After pleadings had been closed certain issues were agreed upon between the parties which were tried separately from the other issues raised on the pleadings. No

doubt the parties intended to find a short way out of the litigation. I doubt whether they have done more than prolong it.

The first issue was whether the transactions in question were gambling transactions. This was decided by Taylor J. in the negative. There is no appeal and we are not further concerned in it.

The second issue was originally as follows:—

"AND WHEREAS the Plaintiff affirms and the Defendant denies:—

"That the letter dated the 3rd October 1952 pleaded, in paragraph 8 of the Defence, cannot constitute a full release and discharge of the Defendants from the contracts in the Statement of Claim pleaded in that there was no consideration moving from the Defendants or otherwise therefor."

This issue is based on the first part of paragraph 9 of the Defence which was based on the facts set out in paragraph 8 of the Defence, viz.:—

"8. On the 3rd October 1952, the Plaintiffs wrote to the Defendants informing them that the said A. Pinto had agreed with the Plaintiffs to pay off the amount due to the Plaintiffs by monthly instalments and that an initial sum had already been paid by him and that in consideration thereof the Plaintiffs 'now relieve you of all liabilities and will not look to you for payment'. The Defendants will refer to the said letter at the trial for its full and correct terms. The said initial payment was the sum of \$10,000 referred to in paragraph 21 of the Statement of Claim.

"9. The Defendants will contend that the said letter of the 3rd October 1952 referred to in the preceding paragraph constitutes a full release and discharge of all and every liability, if any, (but which is not admitted) of the Defendants to the Plaintiffs in respect of the several contracts relied on by the Plaintiffs in this action . . ."

Evidence was called in the Court below, none of which was I think relevant to this particular issue, which really was whether a release not by deed and without consideration discharged a debt; this the learned Judge decided in the negative and I do not think that so far anyone can disagree. But the arguments in the Court below and the judgment appealed against went very far outside the issue agreed upon in such narrow terms. It appears that the issue was more narrowly drafted than the parties intended and before us the parties agreed to an amendment in the following form:—

"AND WHEREAS the Plaintiff affirms and the Defendant denies:—

"(1) That the letter dated the 3rd October 1952 pleaded, in paragraph 8 of the Defence, cannot constitute a full release and discharge of the Defendants from the contracts in the Statement of Claim pleaded in that there was no consideration moving from the Defendants or otherwise therefor, or in the alternative.

"(2) That if the Defendants were ever liable on the said contracts or any of them (which is denied by them) the facts set out in paragraph 8 of the Defence do not constitute a novation whereby the Plaintiffs accepted the said A. Pinto as a contracting party in place of the Defendants."

(the amendment deals with the question raised by the second part of paragraph 9 of the defence which is as follows:—

"Alternatively the Defendants say that if they were ever liable on the said contracts or any of them (which is denied) the facts set out in paragraph 8 hereof constituted a novation whereby the Plaintiffs accepted the said A. Pinto as a contracting party in place of the Defendants.")

This part of the defence pleaded arose out of a letter which purported to have been sent by the respondents to the appellants. For the purposes of this issue this letter must be taken as genuine and written with the authority of the respondents. The letter is in the following terms:—

"3rd October, 1952.

"Messrs. G. Ramchand,  
Singapore.

Dear Sirs,

Further to our letter of 1st October, we wish to inform you that Mr. Pinto has since come to an agreement with us. He undertakes to pay off the entire debt due by monthly instalments. He has since paid us an initial amount and undertakes to pay up all the balance himself, as arranged. In consideration of his undertakings to pay, we now relieve you of all liabilities and will not look to you for payment.

Yours faithfully,  
LAM SOON CANNERY LIMITED  
sgd. (in Chinese)  
Managing Director."

In these circumstances we have to consider the legal consequences of an agreement between Pinto and the respondents by which Pinto undertook to satisfy the claim of the respondents and the respondents in their turn undertook to discharge the appellants from further liability. In the issue agreed between the parties it is a question in the form whether this agreement can constitute a "novation" which extinguishes the liability of the appellants. I am not happy about the terms of the issue. I think that its scope is still too restricted to be of much use. The word "novation" is a technical term of the Civil Law. It is not a technical term of English law, and it does not appear that English authorities are entirely agreed on the meaning. If it is used in its more usual meaning there must be a tripartite agreement between the original parties and the substituted party. This is not the case here. It is only alleged that there was a contract between the respondents and Pinto. It is not alleged that the appellants were parties. I do not think that this can be called a novation. One might be content to decide the question on this narrow ground. Possibly the word 'novation' might be extended to cover the facts in the present case and leave us with the serious question when B owes a debt to A, can an agreement between A and C have the effect of extinguishing the debt owing by B to A?

At the outset we are faced with the fundamental consideration that a stranger cannot acquire rights under a contract. The judgment of Lord Haldane in *Dunlop v. Selfridge*<sup>(1)</sup> at p. 853 says:—

"My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract in person."

So strictly has this been enforced in the Common Law that it appears that in the Common Law payment by a stranger was no answer on the part of a debtor (see *Jones v. Broadhurst*<sup>(2)</sup>), (*Comyn's Digest* Accord (A 2) 5). The effects of a doctrine so unreasonable seem to have been modified on equitable grounds (see *Cook v. Lister*<sup>(3)</sup>, *Thornton & Maynard*<sup>(4)</sup>). But the basis of these decisions seems to be that it is inequitable for a person having been paid by a stranger, to recover over again the debt. This has been extended to the case where a creditor has agreed with a stranger to receive and has received a smaller sum in satisfaction of a debt (*Hirchand v. Temple*<sup>(5)</sup>). The members of the Court of Appeal gave various reasons for their decision but it seems that the explanation given above is the only one in accordance with principle.

It is not alleged in the present case that the contract with Pinto has been performed. I think that equitable principles in the circumstances do not require of the respondents more than that they should give credit for what they have actually received from Pinto. This they have done. I would dismiss the appeal.

*Appeal dismissed.*

Solicitors: *Sisson & Delay; Drew & Napier.*

# PELEPAH VALLEY (JOHORE) RUBBER ESTATES, LTD. v. SUNGEI BESI MINES, LTD.

[K.B. Div. (Tucker J.) March 31, 1944]

*Lease — Sub-lease of tin mines in Johore — Occupation of Johore by Japanese — Claim for instalment of purchase money — Whether sub-lease frustrated by Japanese occupation — Whether doctrine of frustration applicable to mining leases.*

The plaintiffs claimed the balance of the annual instalment due for 1942 under an agreement relating to a tin mining sub-lease of land, situate in Johore and granted by the plaintiffs in 1932. The defendants contended that by reason of the Japanese occupation of Johore in January 1942, the lease was frustrated and therefore nothing was therefore due from them.

Held: (1) the contractual relationship between the parties was not frustrated, since it could not be said that at the date of the sub-lease the parties would inevitably have agreed that the Japanese occupation would cancel rather than suspend the sub-lease; (2) assuming that the law of Johore was the same as English law on the question of frustration of contract, the doctrine of frustration did not apply to mining leases which, in this respect, did not differ from ordinary leases; (3) the